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SERVICE DATE - OCTOBER 1, 2004

SURFACE TRANSPORTATION BOARD

DECISION

STB Docket No. AB-33 (Sub-No. 216X)

UNION PACIFIC RAILROAD COMPANY– ABANDONMENT EXEMPTION–IN WELD COUNTY, CO

Decided: September 30, 2004

By petition filed on June 15, 2004, Union Pacific Railroad Company (UP) seeks an exemption under 49 U.S.C. 10502 from the prior approval requirements of 49 U.S.C. 10903 to abandon a 1.12-mile portion of its Monfort Industrial Lead between milepost 141.12 and milepost 140.00 near Kersey, in Weld County, CO. Notice of the filing was served and published in the Federal Register (69 FR 38952) on June 29, 2004. The exemption will be granted, subject to standard employee protective conditions.

BACKGROUND

According to UP, ConAgra Foods (ConAgra), the sole shipper on the line, operates a livestock feed facility near Kersey. ConAgra shipped 246 carloads of corn in 2002 and 463 carloads of corn in 2003. There is no overhead traffic on the line. UP states that the purpose of abandonment is to permit the sale of the subject track and right-of-way to ConAgra so that it can reconfigure its facility to receive larger, more efficient unit trains of grain at this location. After abandonment, the line will be converted to an industry track, ConAgra will continue to receive rail service from UP, and there will be no need to use transportation alternatives. In fact, UP anticipates that the proposed action will facilitate increased rail traffic with ConAgra.

DISCUSSION AND CONCLUSIONS

Under 49 U.S.C. 10903, a rail line may not be abandoned without our prior approval. Under 49 U.S.C. 10502, however, we must exempt a transaction or service from regulation when we find that: (1) continued regulation is not necessary to carry out the rail transportation policy of 49 U.S.C. 10101; and (2) either (a) the transaction or service is of limited scope, or (b) regulation is not necessary to protect shippers from the abuse of market power.

Detailed scrutiny under 49 U.S.C. 10903 is not necessary to carry out the rail transportation policy. By minimizing the administrative expense of the application process, an exemption will reduce

regulatory barriers to exit [49 U.S.C. 10101(7)]. Because UP's traffic over the remainder of the line is expected to increase after ConAgra reconfigures its facility, an exemption will also foster sound economic conditions and encourage efficient management [49 U.S.C. 10101(5) and (9)]. Other aspects of the rail transportation policy will not be adversely affected.

Regulation of the proposed transaction is not necessary to protect shippers from the abuse of market power. After abandonment, the line will be converted to an industrial spur and ConAgra, the only shipper, will continue to receive rail service from UP. It appears that ConAgra does not oppose the abandonment. However, to ensure that ConAgra is informed of our action, we will require UP to serve a copy of this decision on ConAgra within 5 days of the service date and certify to the Board that it has done so. Given our market power finding, we need not determine whether the proposed abandonment is limited in scope.

Under 49 U.S.C. 10502(g), we may not use our exemption authority to relieve a carrier of its statutory obligation to protect the interests of its employees. Accordingly, as a condition to granting this exemption, we will impose the employee protective conditions set forth in Oregon Short Line R. Co. – Abandonment – Goshen, 360 I.C.C. 91 (1979).

UP has submitted environmental and historic reports with its petition and has notified the appropriate Federal, state, and local agencies of the opportunity to submit information concerning the energy and environmental impacts of the proposed action. See 49 CFR 1105.11. Our Section of Environmental Analysis (SEA) reviewed and investigated the record in this proceeding, and served an environmental assessment (EA) on August 13, 2004. Comments to the EA were requested by September 10, 2004. No comments to the EA were received. Based on SEA's recommendation, we conclude that the proposed abandonment will not significantly affect either the quality of the human environment or the conservation of energy resources.

SEA has indicated in its EA that the right-of-way may be suitable for other public use following abandonment. Public use requests were due no later than 20 days after publication of the notice of the petition in the Federal Register, or by July 22, 2004. No one has sought a public use condition, and none will be imposed.

It is ordered:

1. Under 49 U.S.C. 10502, an exemption from the prior approval requirements of 49 U.S.C. 10903 for the abandonment by UP of the above-described line is granted, subject to the employee protective conditions set forth in Oregon Short Line R. Co. – Abandonment – Goshen, 360 I.C.C. 91 (1979).

2. UP is directed to serve a copy of this decision on ConAgra within 5 days after the service date of this decision and to certify to the Board that it has done so.

3. An offer of financial assistance (OFA) under 49 CFR 1152.27(c)(1) to allow rail service to continue must be received by the railroad and the Board by October 8, 2004, subject to time extensions authorized under 49 CFR 1152.27(c)(1)(i)(C). The offeror must comply with 49 U.S.C. 10904 and 49 CFR 1152.27(c)(1). Each OFA must be accompanied by the filing fee, which is currently set at \$1,100. See 49 CFR 1002.2(f)(25).

4. OFAs and related correspondence to the Board must refer to this proceeding. The following notation must be typed in bold face on the lower left-hand corner of the envelope: **“Office of Proceedings, AB-OFA.”**

5. Provided no OFA has been received, this exemption will be effective on October 31, 2004. Petitions to stay must be filed by October 18, 2004, and petitions to reopen must be filed by October 26, 2004.

6. Pursuant to the provisions of 49 CFR 1152.29(e)(2), UP shall file a notice of consummation with the Board to signify that it has exercised the authority granted and fully abandoned the line. If consummation has not been effected by UP's filing of a notice of consummation by October 1, 2005, and there are no legal or regulatory barriers to consummation, the authority to abandon will automatically expire. If a legal or regulatory barrier to consummation exists at the end of the 1-year period, the notice of consummation must be filed no later than 60 days after satisfaction, expiration or removal of the legal or regulatory barrier.

By the Board, Chairman Nober, Vice Chairman Mulvey, and Commissioner Buttrey.

Vernon A. Williams
Secretary